

4. Assessing impact: A guide for listed public authorities in Wales



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1. Context for this guide

Key dates for the public sector equality duty

- 5 April 2011** General duty came into force
- 6 April 2011** Specific duties in Wales came into force
- 2 April 2012** Listed bodies in Wales to publish equality objectives and Strategic Equality Plans
- 2 April 2012** Listed bodies in Wales must have engaged with interested people as part of gathering relevant information to assess its activities against the general duty. Relevant information must be published as appropriate.

1.1 What is a listed public authority in Wales?

For the purpose of this guidance, a listed public authority in Wales (or ‘listed body’) is one contained in Part 2 of Schedule 19 of the Act as supplemented and amended by the Equality Act 2010 (Specification of Relevant Welsh Authorities) Order 2011. This includes, for example, local authorities, education bodies (including schools), health bodies and the Welsh Government.

1.2 The Equality Act 2010

The Equality Act 2010 (the Act) brings together and replaces the previous anti-discrimination laws with a single Act. It simplifies and strengthens the law, removes inconsistencies and makes it easier for people to understand and comply with it. The majority of the Act came into force on 1 October 2010.

The Act includes a **new public sector equality duty** (the ‘general duty’), replacing the separate duties on race, disability and gender equality. This came into force on 5 April 2011.

1.3 What is the general duty?

The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept

under review. This will achieve better outcomes for all.

Public bodies are required to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not.

This guidance refers to these three elements as the three ‘aims’ of the general duty and so when we discuss the general duty we mean all three aims.

The new general duty covers the following protected characteristics:

- Age
- Gender reassignment
- Sex
- Race – including ethnic or national origin, colour or nationality
- Disability
- Pregnancy and maternity
- Sexual orientation
- Religion or belief – including lack of belief

It applies to marriage and civil partnership, but only in respect of the requirement to have due regard to the need to eliminate discrimination.

This guidance sometimes uses the phrase ‘protected group’ to refer to people who share a protected characteristic.

2. Specific duties in Wales

The broad purpose of the specific duties in Wales is to help listed bodies in their performance of the general duty and to aid transparency.

2.1 Who is covered by the specific duties?

The specific duties apply to listed bodies in Wales but not to non-devolved public authorities operating in Wales.

Most devolved public authorities in Wales covered by the general duty are also covered by the specific duties. The specific duties set out the steps that listed bodies in Wales must take in order to demonstrate that they are meeting the general duty.

This guide is one of a series of non-statutory guides on the specific duties.

The duties inter-relate and more details on each aspect can be found in the following guidance:

1. The essential guide to the public sector equality duty (an overview)
2. Equality objectives and Strategic Equality Plans
3. Engagement
4. Assessment of impact
5. Equality information
6. Employment information, pay differences and staff training
7. Procurement
8. Annual reporting, publishing and Ministerial duties (including review and accessibility)

2.2 Who is the non-statutory guidance aimed at?

The non-statutory guidance has been developed primarily for those responsible for implementing the Wales specific equality duties, particularly those at senior and operational level who are responsible for policy and decision-making. The guidance will also be useful to anyone who has an interest in the work and activities of public authorities.

It is important that senior decision-makers in public authorities (such as Chief Executives, Chairs and Board members) receive adequate briefing on the equality duty. This should equip them to ensure that equality is properly considered within the organisation and influences decision-making at all levels.

The text box(es) below outline the requirements of the regulations and these appear also in the *Essential guide*. The additional text in this guidance provides further context on the specific duties.

3. Assessing for impact

3.1 What the duty requires on assessing for impact

A listed body in Wales must:

- assess the likely impact of proposed policies and practices on its ability to comply with the general duty
- assess the impact of any policy which is being reviewed and of any proposed revision
- publish reports of the assessments where they show a substantial impact (or likely impact) on an authority's ability to meet the general duty
- monitor the impact of policies and practices on its ability to meet that duty.

Reports on assessments must set out in particular:

- the purpose of the policy or practice (or revision) that has been assessed
- a summary of the steps the authority has taken to carry out the assessment (including relevant engagement)
- a summary of the information the authority has taken into account in the assessment
- the results of the assessment
- any decisions taken in relation to those results.

In addition, when assessing for impact on protected groups, listed authorities must:

- comply with the engagement provisions
- have due regard to the relevant information the authority holds.

4. What is ‘assessing impact’?

The requirement to assess impact means that listed bodies must consider relevant evidence in order to understand the likely or actual effect of policies and practices on protected groups.

This includes:

- ensuring the policy or practice does not unlawfully discriminate
- identifying any adverse impacts on protected groups
- considering how the policy or practice could better advance equality of opportunity

- considering whether the policy will affect relations between different groups.

Having considered this, listed bodies must have ‘due regard’ (i.e. give appropriate weight) to the results of such assessments. This requires listed bodies to consider taking action to address any issues identified, such as addressing negative impacts, where possible.

5. What needs to be assessed for impact on protected groups?

The specific duties require listed bodies to assess the impact of 'policies and practices'. This is a very broad term, and potentially covers every aspect of a public authority's activities and functions.

This does not mean that everything an authority does will need to be assessed for its impact on protected groups. A listed body will need to judge how a particular policy or practice may be relevant to meeting the general duty and act proportionately. A listed body will be helped in this task by having due regard to relevant information it has identified. This will include information gathered through engagement with protected groups in meeting the requirement to assess how its work and activities contribute to the general duty.

Listed bodies will still need to assess the impact on protected groups of the implementation of a policy when it has been developed by another authority, for example a Welsh Government national strategy.

Meeting the duty may involve assessing the impact on protected groups of a number of decisions that are made together, for example when conducting a major review of services. This would mean ensuring that a listed body has sufficient relevant information to understand the cumulative effect of a number of decisions.

6. When to assess impact

Assessing the impact on protected groups should be integral to the development and review of policies from the outset.

It is important to monitor the actual impact of a policy as it is implemented, and revisit the assessment of impact on protected groups as part of any review.

7. Who should assess impact?

Whoever is carrying out an assessment of impact should:

- have a detailed understanding of the policy area
- be in a position to ensure that changes can be made where required
- have the support and leadership of senior management.

Having a team involved in assessing the impact on protected groups can help to bring a range of experience and expertise to the process. It may be helpful to have someone with designated responsibility

for recording and developing the assessment.

Often, the individuals involved in an assessment may not have extensive expertise in equality. Specialist equality staff have an important role in supporting less experienced staff to undertake the work of assessing impact. Ideally, assessing the impact will be undertaken by the authority's staff rather than consultants or external agencies, as this will enable authorities to build their own expertise.

8. Reporting on assessments

Where it is clear from the assessment that the likely impact on the authority's ability to meet the general duty is substantial then it must publish a report. That report needs to contain the elements described in the summary under Section 2.1.

9. Joint and partnership working

Where listed bodies work in partnership, for example in Local Service Boards or Community Safety Partnerships, it is important to consider how to develop a shared approach to meeting the general and specific duties.

This may include a joint approach to assessing how the work of the partnership may impact on protected groups. This should ensure that there is no duplication of effort and that responsibility is clearly allocated and information properly shared.

10. Using relevant information

Listed bodies are required to use relevant information when assessing the impact on protected groups of a policy or practice being proposed or reviewed.

It will be important to ensure that all staff carrying out assessments have an overview of the types of information the listed body holds, and if relevant any gaps in that information.

11. Engagement when assessing impact

The specific duties require listed bodies to meet the engagement provisions as part of assessing the impact on protected groups.

This will help listed bodies to understand better the impact of their proposals on different groups.

12. Staff training and leadership

It is important to train staff on assessing impact. This should be appropriate to the particular responsibilities of the staff, to their area of work, and to the authority's chosen method for assessing impact.

It is important that senior decision-makers in public authorities (such as Chief Executives, Chairs and Board members) receive adequate briefing. This should equip them for scrutiny to ensure that equality is properly considered within the organisation, and that the assessments influence decision-making at all levels.

13. Further guidance on assessing impact

Appendix A sets out a possible approach to assessing impact on protected groups.

The Commission has produced guidance on assessing impact, with particular reference to making fair financial decisions in times of financial cuts. This guidance is available on the Commission website at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/using-the-equality-duty-to-make-fair-financial-decisions/guidance-for-decision-makers/>

Appendix A: How to assess impact

This section sets out a suggested step-by-step guide to assessing the impact of policies on protected groups. It is only a suggested approach, **not** a prescribed process under the duty. Authorities should develop a method which best fits their own structures.

1. Establishing relevance to equality

1.1 Proportionality

Public authorities may need to prioritise so that they can focus their efforts and use their resources most effectively. This is of particular importance in the current economic climate.

Policies with high relevance, such as strategic budgetary decisions, grant-making programmes, changes to service delivery (including withdrawal or reorganisation of services), and recruitment or pay policies should always be subject to an assessment for impact on protected groups.

Where it is not practicable or proportionate to undertake an assessment of the impact on protected groups in respect of a particular policy, this decision should be recorded and a rationale provided. You should be able to evidence your decision-making.

1.2 Relevance

In order to decide whether a policy should be assessed, relevance to the general duty should be considered. If an important policy is not assessed because it is wrongly considered irrelevant, the authority may implement decisions which create or perpetuate inequality, and ultimately be open to legal challenge.

You may decide a policy is relevant to some, but not all, protected groups, and in relation to some, but not all, three elements of the general duty. In this case, it is important that the reasons for the decision are explained and recorded.

1.3 Screening for relevance

Many authorities have developed a 'screening' mechanism, to determine whether a policy should be subject to assessment. Screening is a short, sharp exercise that helps to determine relevance; it should not be a proxy for proper assessment. Once it is concluded that assessment is appropriate, screening should end and the assessment begin.

The following questions can help to identify relevance. This is not an exhaustive list; individual authorities should consider what prompts are most able to identify relevance within their particular context.

- Does the policy affect service users, employees or the wider community (therefore be likely to have significant effect on protected groups)? The relevance of a policy will depend not only on the number of those affected, but also the significance of the effect on them.
- Is it a major policy, significantly affecting how functions are delivered in terms of protected groups?
- Will it have a significant effect on how other organisations operate in terms of equality (for example a national strategy or inspection criteria)?
- Does it relate to functions that previous engagement activities have identified as being important to particular protected groups?
- Does it relate to your organisation's equality objectives and outcomes?
- Does it relate to an area where there are known inequalities? (For example, disabled people's access to public transport; the gender pay gap; racist or homophobic bullying in schools, etc.)
- Does it relate to a policy where there is significant potential for reducing inequalities or improving outcomes? (For example improving access to health services for transsexual people; or increasing take-up of apprenticeships by female students, etc.)
- Does it relate to an area where there is a lack of published research or other evidence?

2. Scoping the assessment

2.1 What should be considered in scoping an assessment?

When developing a new policy, or reviewing an existing policy, equality should be considered at the earliest possible opportunity. At this stage:

- Set out the purpose of the policy that has been assessed
- Record the steps that you have taken to impact assess the policy
- Keep a summary of the information that you have taken into account
- Record the results of the assessment
- Record the decisions taken in respect of the assessment.

2.2 What are the aims of the policy, and how do these relate to equality?

This will include understanding the purpose of the policy; the context within which it will operate; who it is intended to benefit, and the results aimed for.

2.3 Which aspects of the policy are particularly relevant to different elements of the general duty?

Identifying this will help to focus on the most important areas; some aspects may already have been identified during a screening process. This does not mean that other aspects should be excluded from the assessment.

The inter-relationship of policies will need to be considered. For example, where a policy on promotion is being assessed, the impact of policies on training and development may need to be considered in order to gain a full picture of any barriers or opportunities.

Where the impact goes beyond the area that the person(s) carrying out the assessment is responsible for, others with appropriate knowledge should be brought into the process as early as possible.

2.4 To which of the protected groups is the policy relevant?

The assessment should consider the impact of the policy for each of the protected groups. This may already have been determined via a prior 'screening' process. Diversity within, as well as between, groups should be considered: for example disabled people with different impairments; people from different racial groups; or different age groups. If it is decided that assessment is not relevant to some groups, this should be recorded and explained.

2.5 What evidence is already available about the needs of relevant groups, and where are the gaps in evidence?

It is important to have as much up-to-date and reliable evidence as possible about the needs and experiences of the different groups the policy is likely to affect. You may have a pool of general information on which to draw, such as demographic information, service-level monitoring data, and recommendations from audit

and inspection reports. This may need to be supplemented for the specific policy under consideration.

You may find it difficult to find the necessary information about particular groups. Where there is insufficient information appropriate action should be taken to fill these gaps, such as involving relevant groups.

Where it is not possible to gather new information in time to inform the assessment, you should consider including such actions in your plans to monitor and review the policy. A lack of evidence should never be used as a reason for inaction.

2.6 Which communities and groups might it be helpful to engage in the development of the policy?

Before carrying out particular engagement activities, you should first look to data from recent consultations, engagement and research. This could be on a recent related policy or recent assessments undertaken by colleagues. This can help to build confidence among groups and communities, who can see that what they have said is being acted on.

3. Analysing information to assess the impact

The collated evidence needs to be analysed and applied to the policy as it is developed or reviewed. You should make a judgement at each stage of the process as to what the likely effect will be and consider whether changes are needed to the policy in question.

The duty involves considering whether the evidence indicates that there is a different impact on particular groups, and particularly whether this impact is disproportionately negative.

In an assessment, it is seldom acceptable to state simply that a policy will universally benefit/disadvantage everyone, and therefore individuals from protected groups will be affected equally. The analysis should be more robust than this, demonstrating consideration of all of the available evidence and addressing any gaps or disparities revealed. Specific steps will be required sometimes in order to address an existing disadvantage or meet different needs.

For example, a policy on tackling gender-based violence will need to assess its potential impact on ethnic minority communities as well as gay and disabled people. An effective assessment for impact on protected groups will help to make sure that you are aware of any particular needs and the likely wider effects of implementing the policy.

Policies that are intended to increase equality of opportunity will need to be considered to ensure that you are confident that the policy is lawful and will

actually achieve the intended equality goals. Steps may be needed to counter any resentment or perception of more favourable treatment among other communities and groups. This would be an important consideration in terms of the ‘good relations’ element of the general duty.

4. Assessing for impact in relation to the three aims of the duty

The duty requires you to assess the impact of policies on your authority’s ability to meet the general duty. This means you should determine whether a policy will assist or inhibit your ability to eliminate discrimination; advance equality; and foster good relations. The specific duties in Wales do not require existing policies or practices to be assessed unless they are being reviewed or revised. Existing policies are monitored.

4.1 Eliminating discrimination

In considering whether the policy eliminates discrimination you should consider whether there is evidence to indicate that:

- the policy may result in less favourable treatment for particular groups
- the policy may give rise to indirect discrimination
- the policy is more likely to assist or impede you in making reasonable adjustments.

4.1.1 Advancing equality of opportunity

In determining how the policy contributes to advancing equality of opportunity, you should consider whether it will help you to:

- remove or minimise disadvantage
- to meet the needs of different groups, and
- encourage increased participation of particular groups.

4.1.2 Good relations

In determining how the policy will affect good relations, you should consider whether it will help you to:

- tackle prejudice, and
- promote understanding.

Identifying the impact on protected groups may be easier when reviewing existing policies, as you are more likely to have some information or data about how the policy has operated in practice. For new policies, you will need to make a measured assessment about the potential impact, based on evidence. The policy should be evaluated against all the information and evidence assembled, and a reasonable judgement made as to whether the policy has or is likely to have substantial positive or negative consequences for particular groups or communities.

5. What should be done

The duty specifically requires you to have due regard, or give appropriate weight, to the results of your assessment. Having considered the potential or actual impact on protected groups, you should be in a position to make an informed judgement on what should be done. There are **four main steps** that you can take:

Option 1: No major change – your assessment demonstrates that the policy is robust. The evidence shows no potential for discrimination and that you have taken all opportunities to advance equality and foster good relations, subject to continuing monitoring and review. If you reach this conclusion, you should document the reasons why and the evidence used to support your decision.

Option 2: Adjust the policy – this involves taking steps to remove any barriers, to better advance equality or to foster good relations. It may be possible to remove or change the aspect of the policy that creates any negative or unwanted impact. You may decide to introduce additional measures to reduce or mitigate any potential negative impact.

It is lawful under the Equality Act to treat people differently in some circumstances, for example taking positive action or putting in place single-sex provision where there is a need for it. It is both lawful and a requirement of the general equality duty to consider if there is a need to treat disabled people differently, including more favourable treatment where necessary.

The impact of any changes needs to be fully understood and assessed to ensure that they do not have unintended consequences and can really achieve the impact expected.

Option 3: Continue the policy – this means that you adopt or continue with the policy, despite potential for adverse impact or missed opportunities to advance equality. As part of the assessment for impact, you should clearly set out the justifications for doing this and it must be in line with the duty to have due regard. In cases where you believe discrimination is not unlawful because it is objectively justified, it is particularly important that you record what the objective justification is for continuing the policy, and how you reached this decision.

Option 4: Stop and remove the policy – if there are adverse effects that are not justified and cannot be mitigated, you should consider stopping the policy altogether. If a policy shows unlawful discrimination it **must** be removed or changed. For guidance on what is unlawful discrimination, refer to the Commission's guidance and Codes of Practice on the employment, goods and services and equal pay elements of the Equality Act, which are available on our website.

Having determined potential impact on protected groups and identified the action required to address any issues which have arisen, authorities must then take action to implement any necessary changes. You may find it helpful to develop an action plan setting out the actions which have been identified; the individuals responsible for implementing the actions; and the timescales for completion.

The result of the assessment and the reasons for it will then need to be brought to the attention of the decision-maker, if it is not the person assessing the policy.

6. Decision-making and publication

In the case of a new policy, decision-making is likely to focus on whether to adopt the policy and on the evaluation of options within the policy proposal. For an existing policy, the decision may be to determine whether a revision is needed, and, for a policy that is already being revised, it may be about the form of those revisions.

Decisions will involve careful balancing and may finally represent the best accommodation between different interests; for example, if the assessment suggests that two or more groups could be adversely affected by a proposal, and the needs of the groups are in conflict, an appropriate balance will need to be found for the groups and policy in question. When balancing such interests, it is important to consider how the decision will affect relations between different groups, as required by the general duty. It is important to ensure that the conclusions reached can be explained, particularly where the evidence can be interpreted in different ways.

Documenting your assessment is important to ensure that the general and specific duties are being met. It was held in *R (Kaur and Shah) v London Borough of Ealing* that:

‘The process of assessments should be recorded... records contribute to transparency. They serve to demonstrate that a genuine assessment has been carried out at a formative stage. They further tend to have the beneficial effect of disciplining the policy-maker to undertake the conscientious assessment of the future impact of [his/her] proposed policy.’¹

Following a decision that shows the impact, or likely impact has a substantial effect on your ability to comply with the general duty, you should publicise the outcome of the assessment. It is important that public authorities make their assessment public, in the interests of transparency and accountability.

7. Monitoring and review

Assessing for impact on protected groups does not end with the introduction of the new or revised policy. Particularly with new policies, an assessment will have helped to anticipate likely effects of the policy on different communities and groups. The reality is that the actual impact of the policy will only be known once it has been introduced and implemented.

It is not enough to make the changes which are expected to eliminate adverse impact or promote equality. It is necessary to use monitoring, evaluation and review processes to ensure that the actual impact matches with the impact which was anticipated, and that relevant actions have been implemented.

The specific duties in Wales include a requirement to monitor impact.

¹ *R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2026 (Admin).*

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